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December 16, 2011

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Applications of AT&T Mobility Spectrum LLC and Qualcomm
Incorporated for Consent to the Assignment of Licenses,*
WT Docket No. 11-18
NOTICE OF EX PARTE PRESENTATION

Dear Ms. Dortch,

On Wednesday, December 14, 2011, I had two telephone conversations with Angela Giancarlo, Chief of Staff to Commissioner Robert McDowell, regarding the aforementioned proceeding. During those conversations, I discussed AT&T's objections to the reduction to the spectrum screen outlined in footnote 137 in the Staff Analysis and Findings recently released in Docket No. 11-65 that is apparently included in the draft Order on circulation.¹

First, I explained that there was absolutely no record regarding the SMR spectrum in this proceeding. The issue was not raised by a single party and there are no facts whatsoever in the record to support the proposed downward adjustment.

Second, I explained that the reduction in screen proposed marked the first time in the Commission's use of the spectrum screen where the screen was actually *reduced*. Consequently, there was no notice whatsoever that the Commission would be applying a reduced screen to transactions currently pending before the Commission. I indicated that AT&T was particularly concerned about this downward adjustment to the screen because the draft order apparently does not make any upward adjustments, notwithstanding that the Commission has expressly recognized that there are significant amounts of spectrum that are being used or could be used for the provision of mobile voice and broadband services but which are not today included in the screen.² Reducing the screen, while ignoring long

¹ *In re Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, Staff Analysis and Findings, at 23 n.137, WT Docket No. 11-65 (rel. Nov. 29, 2011).

² Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, *Fifteenth Report*, 26 FCC Rcd 9664 (2011) at ¶ 276 at Table 26.

overdue increases that have been recognized to be warranted, is not reasonable and raises questions about process. Therefore, if the Commission is to adjust the spectrum screen in this proceeding, it should include not just reductions, but increases. To that end, the Commission should include all 194 MHz of BRS/EBS spectrum, not just the 55.5 MHz it currently considers, as the transition to the revised band plan is essentially complete and the Commission has acknowledged that this spectrum is already being used to provide mobile broadband service.³ In addition, the Commission should include the PCS G block in which Sprint has announced it will launch LTE service in 2012, as well as MSS spectrum.

Third, press reports citing agency officials indicate potential other changes to the spectrum screen. A Politico report last week contained the following information obtained from unnamed Commission officials: “The [Commission] official said the spectrum screen change was less than 3 percent of the total screen. It was changed to reflect that a small slice of spectrum *cannot be used for mobile broadband*.”⁴ This would constitute another departure from the existing spectrum screen policy which today includes “spectrum suitable for the provision of wireless broadband over broadband networks, in addition to spectrum suitable for mobile voice and data services.”⁵ These types of changes to a critical merger analysis input have dramatic impacts on mergers being brought before the Commission. Making these changes after the fact with no prior input or notice from impacted parties lessens confidence in the transparency and openness of the process. This Commission has already made several changes in its processes to improve openness and transparency and it would be completely consistent with those practices to remedy the issue identified here.

Fourth, I pointed out that the adjustment had absolutely no impact in the analysis of this particular proceeding, despite the fact that it had a very significant impact to the staff’s T-Mobile analysis, which utilized this not-yet-adopted adjustment for its spectrum analysis in that transaction. Thus, despite the fact that there is no impact here, these changes, made without record evidence or notice, significantly impact the staff’s merger analysis, which is reason in and of itself to perform these adjustments in an open, notice and comment rulemaking. Because the downward adjustment does not impact the outcome of this analysis, this a perfect time for the Commission to step back and move the staff recommendation to change the spectrum screen into a notice and comment rulemaking.

Going forward, and in light of our concerns about process and the central role the spectrum screen now plays in the Commission's competitive analysis of transactions, the

³ *Id.* at ¶ 273.

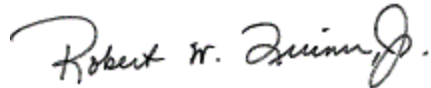
⁴ Kim Hart & Eliza Krigman, *AT&T Raises Stakes Over FCC Review*, Politico (Dec. 7, 2011) (emphasis added), available at <http://www.politico.com/news/stories/1211/70029.html#ixzz1giNjGS3e>.

⁵ *In the Matter of Applications of AT&T Inc. and Centennial Commc’ns Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, Memorandum Opinion and Order, 24 FCC Rcd 13915, 13935 ¶43 (2009). See also, *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17473 ¶ 53 (2008); *Sprint Nextel Corp. and Clearwire Corp. Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations*, Memorandum Opinion and Order, 23 FCC Rcd 17570, 17591-92 ¶ 53 (2008); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp.*, 19 FCC Rcd 21522, 21560-61 ¶ 81 (2004).

Commission should make adjustments to its screen in an open rulemaking, conducted and concluded annually, allowing party participants to file comments on what is appropriate for inclusion in the screen, and subjecting the Commission's decisions on the screen to judicial review. Any changes to the screen would then be based on a factual record having given all interested parties notice and an opportunity to fully participate in that process. The Commission should complete the first such proceeding expeditiously.

In accordance with Commission rules, this letter is being filed electronically with your office for inclusion in the public record.

Sincerely,

A handwritten signature in black ink, reading "Robert W. Quinn, Jr." with a stylized flourish at the end.

Robert W. Quinn, Jr.

cc: Angela Giancarlo, Esq.
Best Copy and Printing, Inc.
Kathy Harris, Esq.
Ms. Kate Matraves
Jim Bird, Esq.